

GT 97-1

Tax Type: GAS REVENUE TAX

Issue: Statute of Limitations Application

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

---

TAXPAYER	)	
Taxpayer	)	
	)	Docket #
v.	)	IBT #
	)	
THE DEPARTMENT OF REVENUE	)	Claim for Credit
OF THE STATE OF ILLINOIS	)	

---

RECOMMENDATION FOR DISPOSITION

Appearances:

Michael R. Jones, Branson, Jones & Stedelin, attorney for taxpayer.

Synopsis:

The TAXPAYER, (the "Taxpayer"), filed a claim for credit for public utility taxes it had overpaid, due to an enterprise zone exemption granted to BUSINESS. The taxpayer operates as a public gas utility furnishing heating/cooking gas to its residences and businesses. The claim was for the period July 1990 through December 1990. The Illinois Department of Revenue (the "Department"), denied the portion of the claim from July through November, finding that it was past the statute of limitations. The taxpayer timely protested the denial and requested a hearing. The taxpayer did not establish that he bore the burden of the tax. It is recommended that the Director of the Department uphold the Tentative Determination of

Claim finding that the taxpayer is not entitled to a credit in the amount of \$6,885.76, plus accrued interest.

Findings of Fact:

1. The *prima facie* case of the Department, consisting of the Notice of Department's Tentative Determination of Claim for Credit, was established by the admission into evidence of Dept. Ex. No. 2.

2. BUSINESS, located at Illinois, was certified by the Illinois Department of Commerce and Community Affairs on April 2, 1990, to be exempt from the payment of state utility taxes, pursuant to the Enterprise Zone Exemption. (Taxpayer Ex. No. 1)

3. The Department, by a letter dated December 16, 1993, notified the taxpayer of the exemption. The delay in notification was due to the Department's lack of knowledge of the fact that the taxpayer was a utility provider for BUSINESS (Taxpayer Ex. No. 1)

4. On December 16, 1993, the taxpayer completed RG-1 gas tax returns for the months of July through November 1990 in an attempt to utilize the exemption. The Department received the forms on December 21, 1993. (Taxpayer Ex. No. 1)

5. By a letter dated January 27, 1994, the Department notified the taxpayer that they had a possible overpayment of tax. The letter stated that the taxpayer would need to file a claim for credit for the overpayment. (Taxpayer Ex. No. 1)

6. The taxpayer filed a claim for credit in the amount of \$8,999.87 for public utility taxes, in particular gas revenue taxes, on February 10, 1994, for the period of 7/90 through 12/90. The reason given by the taxpayer for the filing was that the taxpayer had

never received the enterprise zone exemption letter for BUSINESS.  
(Dept. Ex. No. 1)

7. The Department denied the portion of the claim for July, 1990 through November, 1990, in the amount of \$6,885.76, finding that the Statute of Limitations had expired for that period. (Dept. Ex. No. 2)

8. The Department issued credit memo number 125071 for \$2,563.60 for the December, 1990 period. (Dept. Ex. No. 1)

#### Conclusions of Law

The Gas Revenue Tax Act, found at 35 **ILCS** 615/1 *et seq.*, imposes upon persons engaged in the business of distributing, supplying, furnishing or selling gas, to people for use or consumption and for resale, a tax at the rate of 2.4 cents per therm. See 35 **ILCS** 615/2

The Illinois Public Utilities Act, (the "Act"), found at 220 **ILCS** 5/1-101 *et seq.*, contains exemptions from state and local utility taxes for certain business enterprises, in particular for this matter, the customers that are high impact businesses located in an Illinois Enterprise Zone. (220 **ILCS** 5/9-222) The Act authorizes the Illinois Department of Commerce and Community Affairs to certify the enterprises that comply with the requirements of the Act for such exemptions. The Act also obligates the Department of Revenue to notify the public utilities that provide services to the exempt entities of the exempt status at 220 **ILCS** 5/9-222.1<sup>1</sup>

---

<sup>1</sup>. The Act establishes the enterprise zone exemption and places responsibility for notification at 220 **ILCS** 5/9-222.1 which states:

The Department of Revenue did not give notice to the taxpayer until over three years after the exemption was granted to BUSINESS, because the Department was not notified that the taxpayer was a public utility provider for BUSINESS. Due to the failure of the Department to give the required notice, the taxpayer was denied a portion of the claim for credit because of the expiration of the three to three and one half year time limit imposed by the statute of limitations found at 35 **ILCS** 615/6.<sup>2</sup>

---

A business enterprise which is located within an area designated by a county or municipality as an enterprise zone pursuant to the Illinois Enterprise Zone Act or located in a federally designated Foreign Trade Zone or Sub-Zone shall be exempt from the additional charges added to the business enterprise's utility bills as a pass-on of municipal and State utility taxes...

The Department of Commerce and Community Affairs shall determine the period during which such exemption from the charges imposed under Section 9-222 is in effect which shall not exceed 20 years and shall specify the percentage of the exemption from State utility taxes....Upon certification of the business enterprises by the Department of Commerce and Community Affairs, the Department of Commerce and Community Affairs shall notify the Department of Revenue of such certification. The Department of Revenue shall notify the public utilities of the exemption status of business enterprises from the pass-on charges of State and municipal utility taxes. Such exemption status shall be effective within 3 months after certification of the business enterprise.

<sup>2</sup>. 35 **ILCS** 615/6 states in part:

As to any claim for credit or refund filed with the Department on or after each January 1 and July 1, no amounts erroneously paid more than 3 years prior to such January 1 or July 1, respectively, shall be credited or refunded.

The same day that the Department notified the taxpayer of the exemption, the taxpayer filed an amended return. The Department correctly found that the amended return was not the manner prescribed by the statute for this situation<sup>3</sup> and required that the taxpayer file a claim for credit. Once the claim for credit was filed, the Department refunded the amount collected for December and denied the remainder.

I find that the taxpayer has not established that he was entitled to a refund even if the claim had been timely filed. In order to be entitled to a claim for credit, a taxpayer must establish that he has borne the burden of the tax.<sup>4</sup> The taxpayer here in has not established that he bore the burden of the tax and there seems no question that the taxpayer did not, in fact, refund the money to BUSINESS

The taxpayer argues that the doctrine of estoppel should be applied regarding the issue of the statute of limitations. I find

---

<sup>3</sup>. 35 ILCS 615/6 also addresses the proper method to apply for claims and credits. It states:

Claims for credit or refund shall be filed upon forms provided by the Department. As soon as practicable after any claim for refund is filed, the Department shall examine the same and determine the amount of credit or refund to which the claimant is entitled and shall notify the claimant of such determination, which amount shall be prima facie correct.

<sup>4</sup>. 35 ILCS 615/6 also states:

If it appears, after a claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund **to the person** who made the erroneous payment....(emphasis added)

that an equitable doctrine is not applicable in a situation where the taxpayer has not established the fact that he has borne the burden of the tax.

I therefore recommend that the Director of the Department of Revenue find that the taxpayer is not entitled to a credit in the amount of \$6,885.76, plus accrued interest. It is recommended that the Tentative Determination of Claim be finalized in its entirety.

Respectfully submitted,

---

Barbara S. Rowe  
Administrative Law Judge  
March 21, 1997